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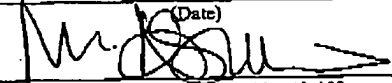
## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Mark W. Miles  
Appl. No. : 10/082,397  
Filed : August 6, 2002  
For : VISIBLE SPECTRUM  
MODULATOR ARRAYS  
Examiner : Mai, Huy K.  
Group Art Unit : 2873

## CERTIFICATE OF FAX TRANSMISSION

I hereby certify that this correspondence and all marked attachments are being transmitted via facsimile to the USPTO Central Fax No. (703) 872-9306 on the date shown below:

November 18, 2004

(Date)  
  
Mark M. Aburnen, Reg. No. 43,458

PETITION UNDER 37 C.F.R. § 1.182

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

For the reasons discussed below, Applicant respectfully requests:

1. WITHDRAWAL of Applicant's previously submitted Response to Notice of Omitted Items (mailed July 31, 2002 and received August 6, 2002); and
2. RESTORATION of Applicant's original filing date of February 25, 2002.

The petition fee pursuant to 37 C.F.R. § 1.17(h) in the amount of \$130.00 is enclosed herewith. The Office is authorized to charge any additional fees required for the consideration of this Petition, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

STATEMENT OF FACTS

1. The above-captioned patent application was originally filed on February 25, 2002 (see filing receipt at Exhibit A) as a divisional of copending parent application serial no. 09/378,143.

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2. On May 31, 2002, the Office issued a Notice of Omitted Items in a Nonprovisional Application on the basis that Figure 23E had been omitted from the original filing (*see* Exhibit B).

3. The Notice of Omitted Items directed Applicant to respond to the Notice of Omitted Items and provided three options for doing so (*see* Exhibit B). The options for responding were, in summary, (I) to disagree with the Office that Figure 23E had been omitted; (II) to submit Figure 23E and accept a later filing date based on the date of such submission; or (III) to accept the application as originally filed in the Office.

4. Applicant timely responded to the Notice of Omitted Items by submitting a Response to Notice of Omitted Item(s) which included Figure 23E and the required fee (*see* Exhibit C). The response was mailed on July 31, 2002 and was apparently received by the PTO on August 6, 2002.

5. The PTO subsequently issued an updated filing receipt showing the later filing date of August 6, 2002 (*see* Exhibit D).

### **ACTIONS REQUESTED**

#### **Summary of Actions Requested**

Changing the original filing date of this application from February 25, 2002 to August 6, 2002 may be prejudicial to Applicant. Accordingly, Applicant now seeks to withdraw Applicant's prior Response to Notice of Omitted Item(s) and thereby restore Applicant's original filing date of February 25, 2002.

#### **WITHDRAWAL of Applicant's Response to Notice of Omitted Items**

Applicant respectfully requests WITHDRAWAL of the Response to Notice of Omitted Item(s) which included Figure 23E that Applicant submitted on July 31, 2002 (*see* Exhibit C), which was apparently received by the Office on August 6, 2002.

#### **RESTORATION of Applicant's original filing date of February 25, 2002**

Applicant respectfully requests that the Withdrawal requested above be treated by the Office as an acceptance by the Applicant of the application as deposited in the Office on February 25, 2002, as indicated in paragraph III. of the Notice of Omitted Items (*see* Exhibit B).

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Applicant respectfully submits that, upon Withdrawal as requested above, the filing date of this application will be February 25, 2002, the original filing date of this application as shown in the originally issued filing receipt (*see* Exhibit A). Accordingly, Applicant respectfully requests that the filing date shown in the PTO records for this application be RESTORED to the original filing date of February 25, 2002.

Applicant respectfully submits that, because this application is still pending, restoration of the original filing date will not materially affect the course of substantive prosecution. To facilitate prosecution in anticipation of the grant of this Petition by the Office, Applicant provides herewith an Amendment in which references to Figure 23 E are deleted from the specification as indicated in the last paragraph of the Notice of Omitted Items (*see* Exhibit B).

#### Conclusion

For the reasons discussed above, Applicant respectfully requests restoration of Applicant's original filing date of February 25, 2002. Applicant respectfully invites the Office to contact the undersigned at the telephone number provided below with any questions regarding this application.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE MARTENS, OLSON & BEAR, LLP

Dated: November 18, 2004

By: 

Marl M. Aburneri  
Registration No. 43,458  
Customer No. 20,995  
(619) 235-8550

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